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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. OF SAN JOSE

ADR

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 CHARLES MCKAIN,

11 Plaintiff,

12 vs.

13 WELTMAN, WEINBERG & REIS , Defendant.

14 C 10 - 00343
15) Case No.
16)
17) COMPLAINT FOR VIOLATION
18) OF FEDERAL FAIR DEBT
19) COLLECTION PRACTICES ACT,
20) ROSENTHAL FAIR DEBT
21) COLLECTION PRACTICES ACT,
22) AND INVASION OF PRIVACY
23)
24)
25)
26)
27)
28)

WHA

19 I. INTRODUCTION

20 1. This is an action for damages brought by an individual consumer for
21 Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §
22 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection
23 Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of
24 which prohibit debt collectors from engaging in abusive, deceptive, and unfair
25 practices. Ancillary to the claims above, Plaintiff further alleges claims for
26
27
28

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
6

7 **III. PARTIES**

8 3. Plaintiff, CHARLES MCKAIN ("Plaintiff"), is a natural person
9 residing in Santa Clara county in the state of California, and is a "consumer" as
10 defined by the FDCPA, 15 U.S.C. § 1692a(3) and is a "debtor" as defined by Cal
11 Civ Code 1788.2(h).
12

14 4. At all relevant times herein, Defendant, WELTMAN, WEINBERG
15 & REIS, ("Defendant") was a company engaged, by use of the mails and
16 telephone, in the business of collecting a debt from Plaintiff which qualifies as a
17 "debt," as defined by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by
18 Cal Civ Code § 1788.2(f). Defendant regularly attempts to collect debts alleged
19 to be due another, and therefore is a "debt collector" as defined by the FDCPA,
20 15 U.S.C. § 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
21
22

24 **IV. FACTUAL ALLEGATIONS**

25 5. At various and multiple times prior to the filing of the instant
26 complaint, including within the one year preceding the filing of this complaint,
27 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
28

1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:

- 3 1. Causing a telephone to ring repeatedly or continuously to
4 annoy Plaintiff (Cal Civ Code § 1788.11(d));
5
- 6 2. Communicating, by telephone or in person, with Plaintiff
7 with such frequency as to be unreasonable and to constitute
8 an harassment to Plaintiff under the circumstances (Cal Civ
9 Code § 1788.11(e));
10
- 11 3. Causing Plaintiffs telephone to ring repeatedly or
12 continuously with intent to harass, annoy or abuse Plaintiff
13 (§ 1692d(5));
14
- 15 4. Communicating with Plaintiff at times or places which
16 were known or should have been known to be inconvenient
17 for Plaintiff, (§ 1692c(a)(1); and
18
- 19 5. Where Defendant had not yet made an attempt to contact
20 Plaintiff's counsel or had not given Plaintiff's counsel
21 sufficient time to respond to the initial attempt to
22 communicate with Plaintiff's counsel, and where Plaintiff's
23 counsel had not given Defendant permission to contact
24 Plaintiff directly, communicating with Plaintiff directly
25 after learning that Plaintiff is being represented by counsel
26 (§ 1692c(a)(2); Specifically, Defendant called Plaintiff on
27 multiple occasions after Plaintiff's counsel sent a notice
letter advising Defendant of representation on December
28 21, 2009. Defendant called Plaintiff on several occasions
on or about January 12, 2010 to January 15, 2010.
Defendant also sent letters to Plaintiff after Plaintiff's
original December 21, 2009 letter.

1 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
2 also constitute an intentional intrusion into Plaintiff's private places and into
3 private matters of Plaintiff's life, conducted in a manner highly offensive to a
4 reasonable person. Plaintiff had a subjective expectation of privacy that was
5 objectively reasonable under the circumstances.

6 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's
7 debt to third parties constitutes a public disclosure of a private fact not of
8 legitimate public concern. Defendant's disclosures were highly offensive to a
9 reasonable person.
10

11 8. As a result of the above violations of the FDCPA, RFDCPA and
12 invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's
13 feelings, personal humiliation, embarrassment, mental anguish and emotional
14 distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages,
15 statutory damages, and costs and attorney's fees.
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COUNT I: VIOLATION OF FAIR DEBT

1 **COLLECTION PRACTICES ACT**
2

3 9. Plaintiff reincorporates by reference all of the preceding paragraphs.
4

5 **PRAYER FOR RELIEF**
6

7 WHEREFORE, Plaintiff respectfully prays that judgment be entered
8 against the Defendant for the following:
9

- 10 A. Declaratory judgment that Defendant's conduct
11 violated the FDCPA;
12 B. Actual damages;
13 C. Statutory damages;
14 D. Costs and reasonable attorney's fees; and,
15 E. For such other and further relief as may be just and proper.

16 **COUNT II: VIOLATION OF ROSENTHAL**
17 **FAIR DEBT COLLECTION PRACTICES ACT**

18 10. Plaintiff reincorporates by reference all of the preceding paragraphs.
19

20 11. To the extent that Defendant's actions, counted above, violated the
21 RFDCPA, those actions were done knowingly and willfully
22

23 **PRAYER FOR RELIEF**
24

25 WHEREFORE, Plaintiff respectfully prays that judgment be entered
26 against the Defendant for the following:
27

- 28 A. Declaratory judgment that Defendant's conduct
29 violated the RFDCPA;
30 B. Actual damages;
31 C. Statutory damages for willful and negligent violations;

- 1 D. Costs and reasonable attorney's fees,
- 2 E. For such other and further relief as may be just and proper.

3

COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION
AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS

4

5 12. Plaintiff reincorporates by reference all of the preceding paragraphs.

6

PRAYER FOR RELIEF

7

8 WHEREFORE, Plaintiff respectfully prays that judgment be entered
9 against the Defendant for the following:

- 10
- 11 A. Actual damages
 - 12 B. Punitive Damages; and,
 - 13 C. For such other and further relief as may be just and proper.

14

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

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17 Respectfully submitted this 15th day of January, 2010.

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21 By: _____
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